

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

WENDELL ELIJAH BATES,

Plaintiff,

v.

**Civil Action No. 5:23-CV-252
Judge Bailey**

**MEDICAL STAFF AT THE EASTERN
REGIONAL JAIL IN MARTINSBURG,
WEST VIRGINIA,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above referenced case is before this Court upon the magistrate judge's recommendation that plaintiff's case be dismissed without prejudice for failure to state a claim and the pending Motion for Leave to Proceed *in forma pauperis* be denied as moot.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United States v. Schronce***, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984).

The report and recommendation was filed on July 14, 2023. [Doc. 6]. Plaintiff did not appear to receive the report and recommendation. The Court then directed the Clerk to re-send the R&R by certified mail, return receipt requested, to plaintiff's address as reflected on the docket sheet on August 9, 2023. [Doc. 7]. Service was accepted on August 12, 2023. [Doc. 8]. Eighteen (18) days have elapsed and no objections have been filed to the magistrate judge's report and recommendation.

A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation [Doc. 6] is **ADOPTED**, and plaintiff's Complaint [Doc. 1] is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim. Plaintiff's Motion for Leave to Proceed *in forma pauperis* [Doc. 2] is **DENIED AS MOOT**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein.

DATED: August 30, 2023.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE